

ORIGINAL

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of)	
)	Re: OTS Order No. NE 96-5
JOSEPH J. CAUCINO,)	
)	Dated: March 4, 1996
formerly a director of)	
ACTION SB,)	
Somers Point, New Jersey)	
)	

STIPULATION AND CONSENT TO ISSUANCE OF CONSENT ORDER

This Stipulation and Consent to Issuance of Consent Order ("Stipulation"), concerning the accompanying CONSENT ORDER OF PROHIBITION (the "Order"), is made by JOSEPH J. CAUCINO ("CAUCINO"), and is accepted by the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, acting by and through its Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, until September 1990 CAUCINO served as a Director of ACTION SAVINGS BANK, Somers Point, New Jersey ("ACTION"), which was a New Jersey chartered savings association regulated by the State of New Jersey and the OTS; and

WHEREAS, the OTS finds that (1) CAUCINO breached his fiduciary duties to ACTION by failing to disclose to the Board of Directors of ACTION an existing creditor relationship with Action Officer George Elkins; (2) that CAUCINO further breached his fiduciary duties to ACTION by failing to disclose to the Board of Directors of ACTION existing credit relationships with Michael Miscio and Jack Caucino, both principals of OBMC, a mortgage broker that originated substantial loans for ACTION for which OBMC

received substantial fees; and (3) that CAUCINO misrepresented financial data on an ACTION loan application in order to conceal the existing creditor relationships with George Elkins and Michael Miscio from other ACTION officers and directors; and

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, has informed CAUCINO that the OTS is of the opinion that the grounds exist in connection with these transactions to commence an administrative proceeding against CAUCINO for the issuance of administrative orders, pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b), 1818(e), and Section 5(d) of the Home Owners' Loan Act ("HOLA"), each as amended by, inter alia, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183; and

NOW, THEREFORE, CAUCINO, without admitting or denying that the aforesaid grounds exist or the OTS' findings and opinions expressed above, except as to jurisdiction, which is admitted, and due to his desire to cooperate with the OTS and to avoid the time and expense of administrative litigation with the OTS, hereby stipulates and agrees as follows:

1. Consideration. CAUCINO hereby stipulates and agrees to the terms of this Stipulation and to issuance of the Order in consideration for OTS forever releasing and discharging CAUCINO from all potential claims and charges that have been or might have been asserted by the OTS arising out of facts known to the OTS and summarized above relating or incident to the transactions

involving an ACTION officer and principals of OBMC.

2. Jurisdiction.

(a) (i) The OTS is the regulatory successor-in-interest to the Federal Home Loan Bank Board, and is an appropriate Federal banking agency authorized to issue the Order pursuant to 12 U.S.C. §§ 1818(e) and 1818(b); and (ii) ACTION was at the time of the transactions herein referred to (1) a "State savings association," as that term is defined at 12 U.S.C. §§ 1462(5) and 1813(b)(2), and (2) an "insured depository institution," as that term is defined at 12 U.S.C. § 1813(c)(2).

(b) CAUCINO acknowledges that: (i) from June 1988 through September 1990, he served as Member of the Board of Directors of ACTION; and (ii) by virtue of such position he had been (1) a director of the ACTION for purposes of Section 5(d) of the pre-FIRREA HOLA (formerly codified at 12 U.S.C. § 1464(d)), and (2) since the enactment of FIRREA on August 9, 1989, he had been an "institution-affiliated party" of the ACTION, within the meaning of Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) CAUCINO further acknowledges that his resignation and separation from the ACTION, less than six years ago, has not affected the jurisdiction and authority of the OTS to take administrative action against him under Section 8 of the FDIA, due to the operation of 12 U.S.C. § 1818(i)(3).

3. Consent. CAUCINO consents to the jurisdiction of the OTS and to issuance of the Order. CAUCINO agrees to comply with the terms of the Order, and he stipulates that the Order (including the issuance thereof), which is remedial, complies with all

requirements of law.

4. Finality. The Order is issued by the OTS under the authority of 12 U.S.C. §§ 1818(e) and 1818(b). CAUCINO acknowledges and understands that, upon issuance, the Order shall be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including Section 8(i) of the FDIA, 12 U.S.C. § 1818(i). CAUCINO also understands that a violation of the Order could subject him to the sanctions imposed by 12 U.S.C. § 1818(j).

5. Waivers. CAUCINO, following consultation with his counsel, hereby voluntarily and knowingly waives the following legal rights:

- (1) the right to be served with a written notice of charges, notice of intention to prohibit or other similar notice pursuant to provisions of Sections 8(e) and 8(b) of the FDIA (12 U.S.C. §§ 1818(e) and 1818(b)), and other applicable law;
- (2) the right to an administrative adjudicatory hearing of the OTS' charges against him;
- (3) the right to seek judicial review of the Order, including (but not limited to) any such right provided by Section 8(h) of the FDIA (12 U.S.C. § 1818(h)) or otherwise to challenge the validity of the Order; and
- (4) any claims for attorneys' fees or expenses under the Equal Access to Justice Act, 5 U.S.C. § 504.

6. No Effect on Actions by Others.

CAUCINO acknowledges and agrees that his consent to the OTS' issuance of the Order is intended solely for purposes of settling and resolving the OTS' claims against him, as provided by paragraph 1 hereof, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect or preclude any other actions, claims, charges, proceedings (whether civil or

criminal) against, or liability of, CAUCINO that may arise in connection with his former relationship with ACTION, or that may be brought or have been brought by the OTS or any other government agency or entity.

7. Indemnification. CAUCINO shall neither (i) cause or permit ACTION (or any subsidiary or other affiliate thereof, or any successor in interest to any of the foregoing) to incur, directly or indirectly, any Covered Expenses (as defined below), nor (ii) apply to or obtain any indemnification (or other reimbursement) from ACTION (or any subsidiary or other affiliate thereof or any successor in interest to any of the foregoing) with respect to any such Covered Expenses directly or indirectly incurred by him. Any such payments to cover Covered Expenses received by or on behalf of CAUCINO shall be returned to ACTION. For purposes of this paragraph, "Covered Expenses" refers to any legal or other professional expenses, or the payment of restitution under the Order, incurred by or on behalf of CAUCINO in connection with: (i) the OTS' investigation (EAST 90-3) concerning ACTION; and/or (ii) the negotiation of this settlement concluded by execution of this Stipulation and issuance of the Order.

8. Communications.

(a) The OTS may send written notices and other communications to CAUCINO, care of his counsel:

Edward J. Plaza, Esquire
Schottland, Vernon, Aaron, Plaza & Costanza
36 W. Main Street
P.O. Box 6578
Freehold, NJ 077728

(b) All communications required or permitted to be sent by CAUCINO to the OTS shall be sent to:
Angelo A. Vigna, Regional Director
Office of Thrift Supervision
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

with a copy also sent to the OTS' enforcement counsel, as follows:

Jules P. Kirsch, Esq.
Regional Counsel for Enforcement
Office of Thrift Supervision
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

9. Miscellaneous.

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors, and assigns due to the operation of Federal banking law, including any amendments thereto.

(c) All references to CAUCINO shall also mean his heirs, successors and assigns.

(d) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation and Consent and the Order.


(e) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

(f) This Stipulation shall become effective upon

acceptance by the OTS, which acceptance shall be indicated by its issuance of the Order.

(g) The terms of this Stipulation may not be amended except by formal written action of the OTS and the written agreement of CAUCINO.

WHEREFORE, on this 27 day of February 1996, JOSEPH J. CAUCINO executes this Stipulation, intending to be legally bound hereby.


JOSEPH J. CAUCINO

Accepted by:

OFFICE OF THRIFT SUPERVISION

By: 

Robert C. Albanese
Acting Regional Director

Date: 3/4 1996

STATE OF FLORIDA
COUNTY OF PALM BEACH

THE FOREGOING INSTRUMENT, OTS # NE95-- , WAS
ACKNOWLEDGED BEFORE ME THIS 27 DAY OF FEB , 1996,
BY JOSEPH J. CAUCINO WHO IS PERSONALLY KNOWN TO ME OR WHO
HAS PRODUCED AS
IDENTIFICATION AND WHO DID/DID NOT TAKE AN OATH.


DONNA DOUGHERTY

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UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

In the Matter of)	
JOSEPH J. CAUCINO,)	OTS Order No. NE 96-5
)	
formerly a director of)	Date: March 4, 1996
ACTION SB,)	
Somers Point, New Jersey)	
)	

CONSENT ORDER OF PROHIBITION

WHEREAS, JOSEPH J. CAUCINO, from June 1988 until September 1996 served as a director of the ACTION SB, Somers Point, New Jersey, ("ACTION") which was originally established as Anchor Savings and Loan Association ("Anchor") on or about January 29, 1943 as a New Jersey chartered mutual savings and loan association. On or about November 18, 1987, ACTION (then known as "Anchor") was converted to a New Jersey chartered stock savings institution, and on or about January 25, 1989, Anchor changed its name to ACTION SB. During this period, ACTION was regulated by the State of New Jersey and the Office of Thrift Supervision ("OTS"); and

WHEREAS, prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183 (Aug. 9, 1989), ACTION had been a stock savings institution and had been regulated by the OTS' predecessor, the Federal Home Loan Bank Board ("FHLBB"); and

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, has informed JOSEPH J. CAUCINO that the OTS is of the opinion that the grounds exist to initiate an administrative proceeding against him for the

issuance of administrative prohibition and cease-and-desist orders, pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b) and 1818(e); and

WHEREAS, JOSEPH J. CAUCINO has executed the accompanying Stipulation and Consent to Issuance of Consent Order ("Stipulation"); and

WHEREAS, JOSEPH J. CAUCINO, in the Stipulation, has consented and agreed to the OTS' issuance of this CONSENT ORDER OF PROHIBITION ("Order") pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §§ 1818(b) and 8(e); and

WHEREAS, the undersigned OTS Regional Director has been duly delegated the authority to cause the OTS to issue consent orders.

NOW THEREFORE, IT IS ORDERED that:

ORDER OF PROHIBITION

1. JOSEPH J. CAUCINO is hereby prohibited from participating in any manner in the conduct of the affairs of any insured depository institution, or any subsidiaries, service corporation or other affiliates thereof; and JOSEPH J. CAUCINO thereby is and shall be subject to the statutory prohibitions provided by section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Due to and without limitation on the operation of 12 U.S.C. §§ 1818(e)(6) and 1818(e)(7), JOSEPH J. CAUCINO, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(A) hold any office in, or participate in any manner in the conduct of the affairs of, any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A) (the "Paragraph (7)(A) Institutions"), including, but not limited to:

- (i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, trust companies, and other banking institutions;
- (ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;
- (iii) any insured credit union under the Federal Credit Union Act, 12 U.S.C. §§ 1781 et seq.;
- (iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq.;
- (v) any appropriate Federal depository institutions regulatory agency;
- (vi) the Federal Housing Finance Board and any Federal Home Loan Bank; and
- (vii) the Resolution Trust Corporation and each and every successor thereto.

(B) solicit, procure, transfer, attempt to transfer, vote or attempt to vote any proxy, consent or authorization with respect to any voting rights in any Paragraph (7)(A) Institution;

(C) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q); or

(D) vote for a director, or serve or act as an "institution-affiliated party," as that term is defined at 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

2. JOSEPH J. CAUCINO shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

3. Due to issuance of this Order, JOSEPH J. CAUCINO is a person "subject to an order in effect under subsection (e)" of FDIA section 8 for purposes of section 8(j) of the FDIA, 12 U.S.C. § 1818(j).

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

5. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: Robert C. Albanese

Robert C. Albanese
Acting Regional Director,
Northeast Region